Supreme Court, U. S.
FILED
JUN 20 1978
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1803

THE DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, an agency of the STATE OF FLORIDA,

Petitioner,

v.

BONANNI SHIP SUPPLY, INC.,

Respondent.

****

ON WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

****

PETITION FOR WRIT OF CERTIORARI

****

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IN THE SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida filed on March 9, 1978.

CITATIONS TO OPINIONS BELOW

On March 9, 1978, the Supreme Court of Florida filed an opinion in this cause. That opinion is found at 356 So.2d 308 (Fla. 1978). That appeal was from an order of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, rendered on March 16, 1977. The Circuit Court's

opinion is unpublished. The two court decisions are set out in the Appendix hereto, pp. 17, 14.

JURISDICTION

The Florida Supreme Court opinion was filed on March 9, 1978, and stated that it became final on the date of expiration of the period for filing a petition for rehearing, that date being March 24, 1978. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

Jurisdiction of the Circuit Court in and for Hillsborough County, Florida, was founded upon Chapter 86, Florida Statutes, wherein Bonanni sought declaratory and injunctive relief against the Division's enforcement of the statute. After the Circuit Court held the statute to be unconstitutional, the jurisdiction of the Florida Supreme Court was invoked pursuant to Article V, §3(b)(1) of the Florida Constitution, which afforded an appeal as a matter of right in such cases. Subsequent to the Supreme Court's order of March 9, 1978, the Division filed a Motion to Stay the Effect of the Court's Order on April 21, 1978. The Florida Supreme Court denied that motion on April 24, 1978.

QUESTIONS PRESENTED

1. Whether Florida's requirement that exporters of alcoholic beverages obtain licenses under §561.14(4), Florida Statutes (1975), creates an undue burden on interstate commerce in violation of the Commerce Clause.

2. Whether the Florida Supreme Court erred in holding that §561.14(4), Florida Statutes (1975), was an unreasonable burden on interstate commerce because of the presence of concurrent federal regulation of exporters.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE I, § 8

(Clause 3) The Congress shall have power ... to regulate commerce with foreign nations, and among the several states and with the indian tribes: ...

AMENDMENT XXI

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FLORIDA STATUTES (1975)

Section 561.14 License classification.--

Licenses referred to in the beverage law shall be classified as follows:

(4) Exporters licensed to transport tax exempt alcoholic beverages into this

state under bond, to be exported under bond for delivery beyond the borders of this state. Each license shall entitle the licensee to store such beverages under bond at one location in this state pending shipment beyond the borders of this state. Florida Statutes, 1975, Volume II, page 932.

STATEMENT OF THE CASE

Petitioner Division of Alcoholic Beverages and Tobacco, Department of Business Regulation, is an agency of the State of Florida. The Respondent, Bonanni Ship Supply, Inc., is a corporation doing business in Tampa, Florida, and licensed by the Petitioner as an exporter of alcoholic beverages.

In October of 1975, Bonanni sought declaratory and injunctive relief against the Division from enforcing §561.14(4), Florida Statutes, which required the Respondent to hold an exporter's license while engaged in the import-export of alcoholic beverages through Florida and entirely within interstate commerce. Bonanni claimed in its Complaint that the Florida statute was in excess of Florida's powers under the 21st Amendment. Cross-motions for summary judgment were filed and in that pleading, Bonanni claimed the statute was violative of the Commerce Clause. On March 17, 1977, the Honorable Vernon W. Evans, Jr., Judge of the Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County, Florida, entered a final summary judgment in favor of Bonanni, holding in part that:

The requirement that Plaintiff obtain an exporter's license from the State of Florida to engage in the business of importing and exporting "in bond" merchandise for distribution and use in foreign commerce, violates the provisions of the Commerce Clause of the United States Constitution. (Article I, Section 8, Clause 3). Accordingly, §561.14(4), Florida Statutes, is hereby declared unconstitutional and invalid as being violative, and in contravention, of the Constitution of the United States of America. Appendix, pp. 17.

The Petitioner filed a Motion for Rehearing which was denied, and thereafter sought immediate review of the Circuit Court's decision in the Florida Supreme Court pursuant to Article V, Section 3(b)(1), of the Florida Constitution which provides for such an appeal as a matter of right. After the Court's unfavorable decision of March 9, 1978, the Division filed a Motion to Stay the Effect of that Court's Order on April 21, 1978. The Florida Supreme Court denied that motion on April 24, 1978. Appendix pp. 25, 31.

REASONS FOR GRANTING THE WRIT

I. FLORIDA'S REQUIREMENT THAT EXPORTERS OF ALCOHOLIC BEVERAGES OBTAIN LICENSES UNDER §561.14(4), FLORIDA STATUTES, DOES NOT CREATE AN UNDUE BURDEN ON INTERSTATE COMMERCE IN VIOLATION OF THE COMMERCE CLAUSE.

This Court has previously held in United States v. State Tax Commission of Mississippi, 412 U.S. 363, 93 S. Ct. 2183, 37 L. Ed.2d 1 (1973), that in the absence of conflicting federal regulation, a state may regulate and control shipments of liquor through its borders insofar as is necessary to prevent the unlawful diversion of the liquor into its internal commerce.

Florida's statute speaks only to the licensing of exporters, in a manner which is in accord with the dictates of United States v. State Tax Commission of Mississippi, supra, and Hostetter v. Idlewild Bon Voyage Liquor Corporation, 377 U.S. 324, 331 n. 10, 84 S. Ct. 1293, 12 L. Ed.2d 350 (1963).

The Florida Supreme Court, however, has misapplied the federal principle that there must be a finding of an undue burden on interstate commerce to invalidate a state license classification statute. In the same breath they have held, as Bonanni has agreed, (Appendix pp. 24, Note 6), that nothing in their opinion shall be considered a prohibition against the State from requiring exporters to be registered for identification purposes.

Section 561.14(4), Florida Statutes, by itself, imposes no duties on the exporter to be bonded, pay fees, file reports or have their inventories inspected. These requirements arose from supporting statutes and administrative rules promulgated by the Division of Alcoholic Beverages and Tobacco under that statute. In an effort to reach the amplifying statutes and rules,

the Court has invalidated §561.14(4) - a simple classification statute. In doing so, the Florida Supreme Court has misapplied the doctrine of undue burden upon interstate commerce to strike down a license classification statute that in principle they admit is permissible. In doing so, they have construed this Petitioner's rights derived from the parameters of the 21st Amendment, the Commerce Clause and the cases previously decided by this Court.

This Petitioner is faced with the untenable position of establishing a license classification for alcoholic beverage merchants dealing in export goods within its jurisdiction, and trying to reconcile the Florida Supreme Court's interpretation that such would be undue burden upon the Interstate Commerce Clause. In effect, this agency is excluded from exercising a police power identification system for exporters solely on the theory that the federal government has established concurrent jurisdiction. The presence of federal regulation does not preclude a state from promulgating regulatory classifications consistent with protecting state interests in possible diversion of nontax paid alcoholic beverages into intrastate commerce. Section 561.14(4), Florida Statutes, does no more than permit the state to identify those persons authorized to warehouse and transport these commodities. If the decision of the Florida Supreme Court stands, it represents a radical departure from this Court's parameters of a state's police power vis a vis the Interstate Commerce Clause and the 21st Amendment.

II. THE FLORIDA SUPREME COURT ERRED IN HOLDING THAT §561.14(4), FLORIDA STATUTES (1975), WAS AN UNREASONABLE BURDEN ON INTERSTATE COMMERCE BECAUSE OF THE PRESENCE OF CONCURRENT FEDERAL REGULATION OF EXPORTERS.

The Circuit Court's order initially holding §561.14(4), Florida Statutes, unconstitutional was based on its determination that the statute violated the provisions of the Commerce Clause and was, therefore, violative and in contravention of the Constitution of the United States. Appendix, pp. 14. However, in its opinion affirming the Circuit Court, the Florida Supreme Court has, in effect, announced a new test for this state's police power: when confronted with the Interstate Commerce Clause, state regulation must fail. In Duckworth v. Arkansas, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941), this Court restrained Arkansas from imposing what it found to be unnecessary or burdensome regulation on liquor in interstate commerce. In light of this Court's prior cases, the Florida Supreme Court has blurred the distinction between the test for an undue burden on interstate commerce, and the doctrine of federal preemption. This Court has previously held in United States v. State Tax Commission of Mississippi, supra, that it is conflicting state regulaton which is objectionable, and not coexisting regulation. However, the Florida Supreme Court's test was not undue burden on interstate commerce, but whether there was duplicative federal regulation. Indicative of the test it applied, the Florida Supreme Court's order stated that:

> We must conclude that the state's attempt to monitor for diversion is merely duplicative of the federal effort. Under these circumstances, the federal regulatory activity in the Commerce Clause of the United States Constitution precludes state regulation. Appendix, pp. 33.

The Florida Supreme Court has misinterpreted the Commerce Clause and this Court's holding in prior cases; the test is still and ought to be whether or not a state statute creates an undue burden on interstate commerce, and not whether it is duplicative of the federal effort to regulate the field as well. The Florida Supreme Court has, in effect, chosen to apply the doctrine of federal preemption to the existing dual regulation of alcohol in interstate commerce, thereby ignoring this Court's previous holdings, and the State's own inherent police power over liquor pursuant to the 21st Amendment.

The Court below, therefore, has decided a substantial federal question in a way disregarding and in conflict with applicable decisions in this Court, so that certiorari should be granted, pursuant to Supreme Court Rule 19(a).

CONCLUSION

For the reasons set forth above, Petitioner prays that the Petition for Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Petition for Writ of Certiorari have been furnished by U.S. Mail to Robert V. Williams, Esquire, 606 Madison Street, Post Office Box 1363, Tampa, Florida 33601, Attorney for Respondent, this 19th day of June, 1978.

Francis Bayley
Francis Bayley

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

THE DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, an agency of the STATE OF FLORIDA,

Petitioner,

v.

BONANNI SHIP SUPPLY, INC.,

Respondent.

****

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY.

BONANNI SHIP SUPPLY, INC.,

Plaintiffs,

-vs- CASE NO. 76-10612

DIVISION "A"

THE DIVISION OF BEVERAGE OF THE DEPARTMENT OF BUSINESS REGULATION, an agency of the State of Florida,

Defendant.

SUMMARY FINAL JUDGMENT

THIS CAUSE came on for final hearing on the motions of both parties for summary final judgment, and the Court having examined the record on file, the briefs of counsel, and having heard oral argument of counsel for each party, and being otherwise advised, it is,

ADJUDGED and ORDERED that:

1. This is an action for a declaratory judgment challenging the constitutionality of a portion of the Florida Beverage Law; Administration (Chapter 561, Florida Statutes) and for injunctive relief.

2. This Court has jurisdiction of the subject matter and of the parties.

3. There is no genuine issue of material fact.

4. The Plaintiff is entitled to a judgment as a matter of law.

5. It is, therefore, the holding of this Court that the requirement that Plaintiff obtain an exporter's license from the State of Florida to engage in the business of importing and exporting "in bond" merchandise for distribution and use in foreign commerce, violates the provisions of the Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3). Accordingly, Section 561.14(4), Florida Statutes is hereby declared unconstitutional and invalid as being violative, and in contravention, of the Constitution of the United States of America.

6. The Defendant, THE DIVISION OF BEVERAGE OF THE DEPARTMENT OF BUSINESS REGULATION, an agency of the State of Florida, and all those acting as agents, employees, or representatives of the DIVISION OF BEVERAGE OF THE DEPARTMENT OF BUSINESS REGULATION are hereby enjoined from enforcing or attempting to enforce against BONANNI SHIP SUPPLY, INC., the licensing requirements imposed by Section 561.14(4), Florida Statutes and from enforcing or attempting to enforce against BONANNI SHIP SUPPLY, INC., any and all auditing, reporting, bonding or other regulatory provisions of Chapter 561, Florida Statutes to the extent that such regulatory provisions are applied to BONANNI SHIP SUPPLY, INC. by reason of Section 561.14(4), Florida Statutes.

DONE and ORDERED at Tampa, Florida, this 16th day of March, 1977.

/s/
VERNON W. EVANS, JR.
Circuit Judge

Copies furnished to:

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, 1978

THE DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, an agency of the STATE OF FLORIDA, Appellant,	
v.	CASE NO. 51,582
BONANNI SHIP SUPPLY, INC., Appellee.	Circuit Court Case No. 75-10612 Division "A"

Opinion filed March 9, 1978

An Appeal from the Circuit Court in and for Hillsborough County, Vernon W. Evans, Jr., Judge

Richard E. Gentry, Staff Attorney, Tallahassee, Florida, for Appellant

Robert V. Williams of the Law Firm of Gibbons, Tucker, McEwen, Smith, Cofer and Taub, Tampa, Florida, for Appellee

ENGLAND, J.

The circuit court for the Thirteenth Judicial Circuit entered final summary judgment in favor of appellee in a declaratory action brought against the Department of Business Regulation, in which it held §561.14(4), Florida Statutes (1975), to be in violation of the Commerce Clause of the United States Constitution.[1] That provision of the statute required Bonanni Ship Supply, Inc., to obtain an exporter's license from the State of Florida in order to engage in the business of importing and exporting "in-bond" merchandise for distribution and use solely in foreign commerce. Under Article V, §3(b)(1) of the Florida Constitution, the Department asks us to review the trial court's declaration of invalidity. The sole issue for review is whether the state's regulation of Bonanni's import-export activity constitutes an unreasonable burden on interstate commerce under the federal constitution.

There is no controversy as to either the facts in this case or the applicable standard of law. Both parties agree that the Commerce Clause of the United States Constitution permits a state to exercise reasonable police powers necessary to protect local interests, and that in this case the sole interest of the state is to prevent a diversion of liquor from foreign commerce into the stream of state distribution. Both parties also agree that the federal government has entered the regulatory field with respect

1. U.S. Const. art. I, §8, cl. 3.

to Bonanni's business, having imposed extensive procedural requirements which govern Bonanni's activities in transferring liquor through the port of Tampa.[2]

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2. Bonanni's business is subject to the Tariff Act of 1930, 19 U.S.C. §1311 et seq., the Alcoholic Beverage and Tobacco Products Provisions of the Internal Revenue Code of 1954, 26 U.S.C. §5001 et seq., and various regulations promulgated by the Department of the Treasury for the U.S. Customs Service, 19 C.F.R. §§1.1-177.11 (1977). In practice, these regulations translate into strict and pervasive controls over Bonanni's operations, as indicated by the following descriptive excerpt from the affidavit of the Assistant District Director of the Bureau of Customs in Tampa:

"When a shipment arrives in the port of Tampa the merchandise is off-loaded from the ship into a dock storage building which is under the control of the Bureau of Customs. The merchandise may not be removed from the dock storage building until a warehouse bond is filed by the importer at the United States' Customs House. . . .

After the warehouse bond is filed by the importer, authority is then given for the merchandise to be removed from the dock of arrival and is then transferred by a customs' bonded cartman, under strick customs supervision. This customs supervision includes an inventory of what leaves the dock storage building and what is delivered to the cartman. (con't).

The ultimate question we are called upon to answer is whether the state's supplementary regulations, as set forth in Chapter 561 of the Florida Statutes,

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2. (con't).

The imported merchandise is off-loaded from the bonded cartman to the bonded warehouse (which warehouse must meet specified construction requirements) again under strick customs' supervision. The bonded warehouse itself is under customs' lock and key and the importer, in this case Bonanni Ship Supply, Inc., does not have a key to the lock.

Before the importer may obtain any release of the merchandise in the bonded warehouse, certain documentation must be filed with the customs' house and approved before withdrawal is allowed. If the documentation is approved a customs' warehouse officer is sent to the bonded warehouse where he unlocks the warehouse premises and permits the importer to withdraw the prescribed goods from the bonded warehouse. At the time of such withdrawal, the customs' warehouse officer accounts and verifies the actual merchandise being withdrawn against the withdrawal.

Upon withdrawal from the bonded warehouse, the merchandise again goes to a bonded cartman where it is transported to the ship for delivery outside the territorial limits of the United States. Again this loading process is under customs' supervision and a receipt is always required from a responsible officer of the vessel certifying the merchandise that has

constitute an unreasonable burden on interstate commerce within the limitations established by the federal courts. This state's regulatory scheme with respect to Bonanni and like exporters consists of a $500 license fee, a $5,000 bond to protect against tax loss in the event merchandise is diverted into state commerce, monthly reports on the transfer of liquor into and out of the bonded warehouse in Tampa, and a semi-annual physical inspection of the bonded warehouse at which a customs' employee must be present.[3]

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2. (con't).

been delivered.

In addition to the above supervisory controls as to the importation and exportation of liquor and bond, the Bureau of Customs also conducts an annual inventory of the importers business the results of which are cross-checked against all records previously filed with the Bureau of Customs. The annual inventory results must, of course, coincide with the documentation which has been filed through the year by the importer regarding each shipment of liquor."

3. These requirements appear specifically in §§561.14(4) (license), 561.37 (bond), 561.41 (inspections), and 561.55 (reports), Florida Statutes (1975). When the Department conducts its semi-annual inspections Bonanni must pay a customs officer $50.00 per day, which amount is not reimbursed by the state.

Relying on Duckworth v. Arkansas, 314 U.S. 390 (1941), and Carter v. Virginia, 321 U.S. 131 (1944), the Department argues that a reasonable state regulation of foreign commerce is permissible to achieve the state's legitimate objective of preventing diversion to in-state commerce. Bonanni contends that Duckworth and Carter are not relevant in this case because both involved state regulation in areas devoid of any federal regulatory activity, and that Epstein v. Lordi, 261 F. Supp. 921 (D.N.J. 1966), aff'd, 389 U.S. 29 (1967), is more to the point. Epstein was a Commerce Clause case involving competing state and federal regulations.

Epstein is persuasive here, and we hold that the state's regulatory activity is not reasonably necessary to protect against diversion. On the record here, the federal regulatory scheme is more than adequate to detect any diversion from the importation, storage, and exportation of wholesale liquor passing through the State of Florida.

Obviously, the license fee and bonding requirement provide no protection for the state against diversion. Similarly, the filing of monthly reports offers nothing to the state which the federal government does not already have; indeed, Bonanni attaches to the state's form each month a copy of the report it files with the federal government for the same purpose. The one state activity that has no counterpart in the federal scheme of regulation is the semi-annual physical

inventory.[4] Since we can discern no information regarding diversion that might emerge from the state's physical inventory which would not also be revealed by the paper and physical inventories provided by the federal government, we must conclude that the state's attempt to monitor for diversion is merely duplicative of the federal effort. Under these circumstances the federal regulatory activity and the Commerce Clause of the United States Constitution preclude state regulation.[5]

---

4. The federal government apparently conducts an annual physical inventory against which Bonanni's reports are verified. See note 2 above. The record on this point is not entirely clear, but we can assume for purposes of this issue that the annual federal inventory differs to some extent from the state's semi-annual inventory.

5. In United States v. State Tax Comm'n, 412 U.S. 363, 307 (1973), the Court indicated that

> "a State may, in the absence of conflicting federal regulation, properly exercise its police powers to regulate and control [liquor] shipments during their passage through its territory insofar as necessary to prevent the 'unlawful diversion' of liquor into the internal commerce of the State' . . ." (Emphasis added)

See also Texas Liquor Control Bd. v. Ammex Warehouse Co., 384 S.W.2d 768 (tex. App. 1964), cert. denied, 382 U.S. 977 (1966).

Section 561.14(4), which requires exporters such as Bonanni to obtain a license and to comply with the bonding, filing, and inventory requirements we have described, violates the Commerce Clause of the United States Constitution and is invalid.

Nothing in our decision today should by construed as prohibiting the state from requiring exporters to register with the state for identification purposes.[6] A reasonable registration requirement would not, in the words of the federal constitution, interfere with congressional pow r "[t]o regulate commerce with foreign nations, and among the several States . . . ."

The decision of the trial court is affirmed.

OVERTON, C.J., BOYD, SUNDBERG and HATCHETT, JJ., Concur.
ADKINS and KARL, JJ., Dissent.

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6. Bonanni concedes that a reasonable registration requirement is not an unreasonable burden on interstate commerce.

IN THE SUPREME COURT OF FLORIDA, JANUARY TERM, 1978

THE DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, an agency of the STATE OF FLORIDA,

Appellant,

-vs-

BONANNI SHIP SUPPLY, INC.,

Appellee.

CASE NO. 51,582

Circuit Court Case No. 75-10612 Division "A"

MOTION FOR STAY

TO THE HONORABLE ARTHUR J. ENGLAND, JR., CHIEF JUSTICE, FLORIDA SUPREME COURT.

MAY IT PLEASE THE COURT:

The Appellant, Division of Beverage, Department of Business Regulation, an agency of the State of Florida, by and through its undersigned attorney, hereby asks this Court to stay the execution, enforcement and effect of its order in the above-styled cause, which it rendered on March 9, 1978, holding Section 561.14(4), Florida Statutes (1975), unconstitutional and in violation of the Commerce Clause of the United States Constitution. (See Exhibit 1). As grounds, the Appellant would show that:

1. At this time, the Appellant intends to appeal this Honorable Court's

decision to the United States Supreme Court.

2. Such an appeal is allowed by Petition for Writ of Certiorari, pursuant to 28 U.S.C. §2101(c), which states that:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree. (Emphasis Supplied).

3. 28 U.S.C. §2101(f), states that:

> In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application

> for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the party may sustain by reason of the stay. (Emphasis Supplied).

In the case of Williams v. Keyes, 186 So. 250, 267 (1938) the Supreme Court of Florida noted that:

> ...This Court has always looked with favor on any suggestion to have its orders or decrees reviewed by the Supreme Court of the United States and being so, applications or stay orders of the kind brought in question have been granted in rather pro forma manner.

The above cited case dealt with the Florida Supreme Court ordering a recall election in Dade County. The City Commissioners of Dade County subsequently filed a motion to stay execution and enforcement of the final judgment of this Court for 60 days to permit them to apply to the Supreme Court of the United States for writ of certiorari. The Florida Supreme Court granted the Commissioners' application for a stay, noting that:

> By the very terms of the act quoted (28 U.S.C. §350, now entitled 28 U.S.C. §2101), its application

> is limited to cases in which the judgment is subject to review by the Supreme Court on writ of certiorari.

The Court further noted that:

> ...If it is made to appear that the case is one that would likely be taken up on certiorari and one which the balance of convenience requires a suspension of its decree and a withholding of its mandate, the stay order should be granted.

5. Section 561.14(4), Florida Statutes (1975), was found to be repugnant to the Commerce Clause of the United States Constitution. This Court's decision was based on Federal law, and a construction of both the 21st Amendment and the Commerce Clause of the United States Constitution. Therefore, it appears likely that the United States Supreme Court could review this case pursuant to a writ of certiorari.

6. Pursuant to Fla. R. App. P. 5.12, the state or any of its political subdivisions need not post supersedeas bond unless expressly required by the Court.

Further, the staying of this Court's order would have only a negligible effect on the Appellees by requiring them to continue providing this agency with monthly inspection reports and on-site inspection of their in-bond merchandise.

7. Subsequent to this Court's order of March 9, 1978, the Division of Beverage

has received no information regarding the Appellee's in-bond merchandise, either from the Appellee or from United States Customs, and is, therefore, totally without knowledge of the shipment of alcohol and cigarettes through its borders, as well as any possible shortages from those shipments.

8. The Division of Beverage does not request a stay of this Court's order in order to deprive the Appellee of his remedies, but rather to maintain the flow of information to this agency until such time as the United States Supreme Court rules on its Petition for Writ of Certiorari.

9. As of the date of this motion, this agency has not received a mandate from this Court regarding this matter.

WHEREFORE, and for the above cited reasons, the Appellant, Division of Beverage, Department of Business Regulation, as an agency of the State of Florida, asks that this Court stay the execution and enforcement of its order entered March 9, 1978, for a period of 90 days, or in the alternative, until such time as the United States Supreme Court rules on its forthcoming Petition for Certiorari. The Appellant also asks that the Court allow it to proceed without posting bond due to the negligible financial requirements which the statute places on the Appellee.

Respectfully submitted,

/s/
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904/488-8846

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Stay has been sent by U.S. Mail, this _____ day of April, 1978 to Robert V. Williams, Esquire, 606 Madison Street, Post Office Box 1363, Tampa, Florida 33601.

RICHARD E. GENTRY

IN THE SUPREME COURT OF FLORIDA, MONDAY, APRIL 24, 1978

DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, etc.,

Appellant,

vs. : CASE NO. 51,582

BONANNI SHIP SUPPLY, INC.,

Appellee.

Appellant's motion for stay is hereby denied.

A True Copy

TEST:

/s/
Sid J. White
Clerk, Supreme Court

W
CC: Richard E. Gentry, Esquire

Robert V. Williams, Esquire